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IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1956

—◆—  
No. 563  
—◆—

CITY OF DETROIT,  
a Michigan Municipal Corporation,  
and

COUNTY OF WAYNE,  
a Michigan Constitutional Body Corporate,  
Petitioners and Defendants,

vs.

THE MURRAY CORPORATION OF AMERICA,  
a Delaware Corporation,  
Respondent and Plaintiff,

and

THE UNITED STATES OF AMERICA,  
Intervenor

—◆—  
*A PETITION FOR WRIT OF CERTIORARI TO*  
~~ON APPEAL FROM THE UNITED STATES COURT OF APPEALS~~  
FOR THE SIXTH CIRCUIT  
—◆—

**REPLY BRIEF OF PETITIONERS**  
—◆—

## I.

No contradiction appears in either of the briefs filed by respondents as to the large amounts and number of pending cases involved (Pet. 8).

## II.

Neither is it contradicted that the Government has been confronted with the same basic problem in other jurisdictions involving even greater amounts than here with the result that uncertainty exists at the federal level as well as in local units of Government regarding the validity and effect of partial payment-title passage clauses (Pet. 9-12).

## III.

Petitioners urged as their third ground that the Court of Appeals erred in invalidating a state statute, in failing to go beyond the contract provisions and examine into the agreed facts and in ignoring the careful method employed in noting on the roll that the assessment against respondent Murray covering the personal property involved was "assessed subject to prior rights of the Federal Government";\* that said decision accordingly comes in conflict with the mode of assessment approved by this Court in earlier decisions, *S. R. A. v. Minnesota*, 327 U. S. 558; *New Brunswick v. United States*, 276 U. S. 547, 556 (Pet. 12); finally that conflict exists with state court decisions as to whether responsibility for payment under these circumstances rested solely on respondent Murray and not the Government (Pet. 13).

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\*Ex. 3, p. 103 of Joint Appendix.

## CONFLICT OF DECISIONS

Respondents concurrently open their respective responses to these reasons by stating that petitioners make no contention of conflict of decision. We submit that respondents' failure to recognize the above assertions of conflict is consistent with omission of any mention of said notation "assessed subject to prior rights of the Federal Government" in their respective factual statements.

The position of respondents that this matter does not involve decision of a state question in conflict with applicable state law results from reluctance to acknowledge any possibility that the facts of the case at hand differ from *Allegheny* and *Kern-Limerick* by virtue of:

- (a) the particular facts here agreed upon,
- (b) the admitted course of conduct of respondent Murray,
- (c) such notation on the assessment roll, and
- (d) involved here is a personal property tax which under local law may be assessed and collected from the person in possession of the property.

## STATE LAWS INVALIDATED

The decision of the Court below had the effect of invalidating Michigan statutes and local ordinances as applied to transactions where a private contractor was in possession of personal property on hand on assessment day in connection with a contract calling for delivery to a prime contractor with the United States.

The Supreme Court of Michigan has sustained the right of the City of Detroit under its Charter to assess taxes on personal property against the person in possession of such personal property rather than the owner, when it so elects. In that event it has authority to collect the personal property taxes, if unpaid, by suit in assumpsit against such person in possession. This provides its complete remedy and protects whatever interest the Government has in the property.

*Detroit Shipbuilding Co. v. City of Detroit*, 228 Mich. 145, 199 N. W. 645, 135 A. L. R. 597;  
*City of Detroit v. Gray*, 314 Mich. 516, 22 N. W. 2d 771.

Such determination by the State's highest Court that the person in possession of personal property is responsible for payment thereof is final and not subject to challenge in the Federal Court.

*S. R. A. v. Minnesota*, 327 U. S. 558, 565;  
*Alabama v. King & Boozer*, 314 U. S. 1;  
*Federal Land Bank v. Bismarck*, 314 U. S. 95, 99;  
*Kern-Limerick and U. S. v. Scurlock*, 347 U. S. 110, 121.

To arrive at its decision then, the courts below must have held Michigan statutes and local ordinances, as ap-

plied to the facts before them, unlawfully interfered with the Federal Constitution. The problem is one of alleged clash between state and federal laws.

Unlawful interference is a holding of invalidity because of repugnancy. Any other view would permit a Court of Appeal to deprive this Court of appellate jurisdiction, when, in fact, holding a state statute invalid because of repugnancy to a federal law, merely by phrasing the opinion in such a way as not to use the exact words "invalid", "repugnant", "constitutional", "conflict" or "interference".

By way of example the opinion below, 234 F. 2d 380, 383, characterized the decision of this Court in *Kern-Limerick* as follows:

"The Arkansas gross receipts tax law was held unconstitutional as applied to transactions whereby private contractors procured in Arkansas two tractors for use in constructing a naval ammunition depot for the U. S. under a cost-plus-fixed fee contract entered into with the Navy Department.  
\* \* \*

"A statute may be invalid as applied to one state of facts, and yet be valid as applied to another."

*Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282, 289.

## GOVERNMENT'S POSITION INCONSISTENT

The position of respondents here is unlike that taken by the Government when the facts were reversed. In *Appeal No. 487, October Term*, entitled *United States and Borg-Warner Corporation v. City of Detroit*, right of review by appeal was claimed from determination of the Michigan Supreme Court holding a state statute valid where a tax was imposed on lessee of real property owned by the United States.

Arguing that the questions there were substantial, counsel for Government there urged at p. 8 of its Jurisdictional Statement:

"This appeal presents important constitutional questions involving the immunity of the United States from taxation of its property by the States. The decision of the Supreme Court of Michigan upholding the validity of a local tax which is imposed on a lessee of property belonging to the United States which is measured by the full value of the property, carries obvious and far-reaching implications. While the precise point in issue has not been, but ought to be, settled by this Court, we believe that fundamental principles regarding the sovereign immunity of the United States, which have received repeated application in the decisions of this Court, compel the conclusion that the tax in question is constitutionally invalid."

Invalidation of the present personal property tax by the Court of Appeals likewise presents federal questions which have not been but ought to be settled by this Court and involve much farther reaching implications than the validation of the tax involved in Appeal 487.

## IV.

The final reason urged by petitioners of the need for reappraisal and settlement of the doctrine of "incidence of the tax" (Pet. 13 *et seq.*) is disregarded by respondents. Similarly it was not listed as one of the issues by the Court below and was disposed of only passingly in its opinion.

Accordingly full consideration and argument are urgently needed and should be permitted to resolve this and all of the important federal issues raised by this petition.

For the reasons given, it is prayed that the petition heretofore filed be granted.

Respectfully submitted,

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December 17, 1956.